

P I L E D

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In the Supreme Court of the United States
OCTOBER TERM, 1993

WALDEMAR RATZLAF AND LORETTA RATZLAF,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

In a prosecution for willfully violating 31 U.S.C. 5324(3) by structuring currency transactions with one or more domestic financial institutions “for the purpose of evading the reporting requirements of [31 U.S.C.] 5313(a),” whether the government must prove that petitioners knew that structuring for that purpose was unlawful.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A40) is reported at 976 F.2d 1280.

JURISDICTION

The judgment of the court of appeals was entered on October 6, 1992. On January 4, 1993, Justice O'Connor extended the time for filing a petition for a writ of certiorari to and including January 19, 1993. The petition for a writ of certiorari was filed on January 14, 1993, and was granted on April 26,

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1993. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

31 U.S.C. 5313 provides in pertinent part as follows:

(a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

* * * * *

31 U.S.C. 5322 provides in pertinent part as follows:

(a) A person willfully violating this subchapter [31 U.S.C. 5311 *et seq.*] or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) shall be fined not more than \$250,000, or imprisonment [imprisoned for] not more than five years, or both.

(b) A person willfully violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315),

while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period, shall be fined not more than \$500,000, imprisoned for not more than 10 years, or both.

* * * * *

31 U.S.C. 5324¹ provides as follows:

No person shall for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction—

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

31 C.F.R. 103.22 provides in pertinent part as follows:

(a)(1) Each financial institution other than a casino or the Postal Service shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$10,000.

¹ Subsequent to the court of appeals' decision in this case, Congress amended Section 5324 to add a subsection (b). It recodified Section 5324(1)-(3) as Section 5324(a)(1)-(3), without substantive change. See *Annunzio-Wylie Anti-Money Laundering Act*, Pub. L. No. 102-550, Tit. XV, § 1525(a), 106 Stat. 4064 (1992). For simplicity, we refer to the codification in effect when the court of appeals issued its decision.

Multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than \$10,000 during any one business day. Deposits made at night or over a weekend or holiday shall be treated as if received on the next business day following the deposit.

(2) Each casino shall file a report of each deposit, withdrawal, exchange of currency, gambling tokens or chips, or other payment or transfer, by, through, or to such casino which involves a transaction in currency of more than \$10,000. Multiple currency transactions shall be treated as a single transaction if the casino has knowledge that they are by or on behalf of any person and result in either cash in or cash out totalling more than \$10,000 during any twenty-four hour period.

STATEMENT

Following a jury trial in the United States District Court for the District of Nevada, petitioner Waldemar Ratzlaf was convicted on four counts of structuring currency transactions, in violation of 31 U.S.C. 5322(a) and 5324(3). Both petitioners were convicted of conspiring to violate the federal anti-structuring laws, in violation of 18 U.S.C. 371, and of interstate travel in aid of racketeering, in violation of 18 U.S.C. 1952(a)(3). Waldemar Ratzlaf was sentenced to 15 months in prison, to be followed by three years of supervised release, and was fined \$26,300. Loretta Ratzlaf was sentenced to five years' probation, including ten months of home detention, and was fined \$7,900. The court of appeals affirmed. J.A. 51-69.

1. a. Petitioner Waldemar Ratzlaf was a high-stakes gambler who frequently won and lost large sums of money. Tr. 108-109, 115-118, 165, 181, 188, 205-212, 310.² The records of the Internal Revenue Service showed that Waldemar had engaged in large cash transactions with casinos in 1986, but that he had reported no gambling income for that tax year. Accordingly, on May 4, 1988, the IRS informed Waldemar that petitioners' tax return for 1986 was being audited. 4/10/91 Tr. 7-8, 10-11, 13.³

In auditing petitioners' return, the IRS conducted a "bank deposit analysis," comparing petitioners' total bank deposits with their income. That analysis disclosed a discrepancy of more than \$22,000 for 1986. 4/10/91 Tr. 11, 25-27. Waldemar failed to identify any gambling income for tax year 1986 during his first interview with IRS Agent Connie Fox on May 24, 1988. When confronted with the results of Agent Fox's bank deposit analysis, however, Waldemar and

² For example, Waldemar Ratzlaf won \$134,200 during a three-day visit to Caesar's Lake Tahoe in March 1988 and lost \$40,000 in one day at the same casino on January 2, 1989. Tr. 115-116. Waldemar's average winnings were more than \$15,000 per visit during his eight visits to that casino between October 1987 and January 1989. Tr. 116, 135. During one of his visits, Waldemar's average bet was \$12,000. Tr. 117-118. At Harvey's Resort Hotel, he was among the top ten percent of customers. Tr. 188, 208. During six visits to Harvey's between April and December 1988, Waldemar's average bet was more than \$6,000, and his net losses totaled more than \$94,000. Tr. 212; see Tr. 205-212.

³ The April 10, 1991, testimony of IRS Agent Connie Fox, who conducted the audit, is not paginated sequentially with the rest of the transcript. We identify the transcript covering her April 10, testimony as "4/10/91 Tr."

petitioners' accountant acknowledged increasingly large amounts of gambling income for that year. *Id.* at 22, 34-35.⁴ After the IRS expanded the audit beyond 1986, petitioners acknowledged substantial unreported gambling income for 1985 and 1987 as well.⁵ Following her interviews with Waldemar and petitioners' accountant on July 11 and 12, 1988, Agent Fox concluded that petitioners had unreported income of \$14,000 for 1985, \$23,200 for 1986, and \$101,330 for 1987—figures well in excess of those previously indicated by petitioners. Tr. 277-279.⁶

In addition to the bank deposit analysis, Agent Fox attempted to ascertain whether petitioners had undeposited gambling earnings. During the audit, Fox repeatedly asked whether Waldemar kept cash from gambling earnings stored in his office safe or at his home. 4/10/91 Tr. 30, 38-41, 55. Waldemar ex-

⁴ Waldemar at first conceded that he had perhaps won "a couple of thousand" dollars in gambling in 1986. The next day, Waldemar increased that figure to \$8,000. 4/10/91 Tr. 27-29. Several weeks later, Waldemar's accountant informed Fox that Ratzlaf's gambling earnings for 1986 were more than \$13,000. *Id.* at 34-35.

⁵ On June 21, 1988, petitioners' accountant gave Agent Fox a revised income schedule for 1987 indicating that more than \$46,000 in gambling income had been deposited into petitioners' accounts that year. 4/10/91 Tr. 18, 30-31, 37-38. On July 11, 1988, the accountant provided a revised income schedule indicating unreported gambling income of \$13,150 for 1985, \$13,625 for 1986, and \$46,900 for 1987. *Id.* at 47-50.

⁶ On July 13, 1988, Agent Fox referred the case to the IRS's criminal investigation division. Tr. 246-248. Waldemar was contacted by a criminal investigator on November 15, 1988. Tr. 1263.

plained that he kept his cash winnings in a safe in his restaurant and deposited them in his bank account as needed. *Id.* at 39. Waldemar told Agent Fox that he had approximately \$15,000 in the safe at the end of 1986, but that he and his wife had deposited that cash in the bank during 1987. He also indicated that he had between \$8,000 and \$10,000 in the safe at the end of 1987, but had deposited it in early 1988. *Id.* at 41-42. He added that he usually kept between \$1,300 and \$1,500 in cash on hand. *Id.* at 40. When Fox asked Waldemar whether he had any cash "left in the mattress or in the backyard or that sort of thing," Waldemar replied that he did not. *Id.* a 55. At trial, however, Waldemar conceded that he had kept business and gambling income, including winnings of \$134,000 from March 1988, in a piece of furniture in his bedroom. Tr. 1325, 1368.

b. On October 20, 1988, Waldemar Ratzlaf lost substantial sums of money gambling at the High Sierra Casino in Nevada. At Waldemar's request, the casino increased his line of credit to \$160,000. Waldemar then ran his losses up to \$160,000, exhausting his credit limit. The casino gave him one week to pay the debt. J.A. 54-55; Tr. 312-316.

On October 27, 1988, petitioners returned to the High Sierra with a shopping bag full of cash to pay off their debt. Tr. 318. Waldemar told the casino's shift manager that he wanted to pay off his markers, but did not want "any paperwork" filled out. *Ibid.*⁷

⁷ At approximately the same time, after Waldemar made several large cash payments to Caesar's Lake Tahoe, Caesar's filed three currency transaction reports with the Nevada State Gaming Board. On October 29, 1988, Waldemar in-

When the shift manager told casino vice president Stephen Allmaras about the situation, Allmaras explained to Waldemar that a casino is like a bank and cannot accept a cash payment of more than \$10,000 without filling out a report.⁸ Allmaras, however, told Waldemar that he could accept a check without having to fill out a report. Tr. 322-324; Pet. App. 9-10.

Accompanied by Ron Hunt, a High Sierra employee, petitioners went to several banks in and around Stateline, Nevada, and South Lake Tahoe, California. At the First Interstate Bank in Stateline, Waldemar and Loretta Ratzlaf each purchased a cashier's check for cash in the amount of \$9,500. Tr. 463-466. Those purchases formed the basis of the structuring charges in Counts 2 and 3 of the indictment. J.A. 11-12.

Petitioners then went to the Nevada Banking Company in Stateline, where each petitioner made another cash purchase of a \$9,500 cashier's check. Tr. 471-472. Initially, Loretta asked to buy a cashier's check for an amount exceeding \$10,000. When the teller told her that a form would have to be filled out, Loretta asked instead to purchase two \$9,500 cash-

structed Caesar's credit officer to monitor his cash transactions so that his payments did not exceed \$10,000. Tr. 102, 126-130, 179, 181-183.

⁸ Under federal regulations, casinos have a currency transaction reporting requirement similar to that of banks. See 31 C.F.R. 103.22(a) (2). Nevada casinos, however, do not file currency transaction reports directly with the federal government. Under an arrangement between federal and state authorities, Nevada casinos file a comparable report with state gaming authorities, and the state authorities transmit copies of the reports to federal authorities. Tr. 319-320; see 31 C.F.R. 103.45(c).

ier's checks—one in her name and one in Waldemar's name. Tr. 474-476. The structuring charges in Counts 4 and 5 of the indictment were based on those purchases. J.A. 13-14.

Petitioners next traveled to California to purchase additional cashier's checks. At the Truckee River Bank in South Lake Tahoe, California, Waldemar tried to make two cash purchases of \$9,500 cashier's checks for himself and Loretta. The teller, however, told him that a report would have to be filled out because the transaction involved more than \$10,000 in cash. Tr. 507-510. After Hunt protested, a supervisor came over and told petitioners that the bank would fill out a currency transaction report because more than \$10,000 was crossing the teller's window. Tr. 514, 518, 576, 597-598. At that point, Hunt requested the return of \$9,500 to petitioners, and Loretta purchased only a single cashier's check for \$9,500. Tr. 518-520, 577, 598.⁹

At their next stop, the Bank of America in South Lake Tahoe, petitioners each purchased a \$9,500 cashier's check for cash at separate teller's windows. Tr. 622-627, 698-700. Petitioners then went to the Security Pacific National Bank in South Lake Tahoe. Again, Waldemar and Loretta went to separate teller's windows and each sought to make a cash purchase of a \$9,500 cashier's check. Tr. 634-635, 715-719. After Waldemar purchased his check and left the bank, the two tellers assisting petitioners encountered each other taking the cash from petitioners'

⁹ The bank filled out a "suspicious" transaction report, which it may do if a currency transaction report is not required but the bank is concerned about the legality of the transaction. Tr. 521.

purchases to the vault. Tr. 635-636, 721. Because the circumstances appeared suspicious, a supervisor approached Loretta and explained that the bank would have to fill out a currency transaction report. Tr. 637-639, 641, 721-723. Loretta then stated that she did not want to have a report filled out and asked for the money back. Tr. 642.

Finally, petitioners went to the Central Bank in South Lake Tahoe. Petitioners again went to separate teller's windows to buy \$9,500 cashier's checks with cash. Tr. 651; see Exhs. 36, 37. When the teller assisting Loretta noticed that another teller was performing a similar transaction for Waldemar, the tellers reported the situation to their supervisor. Tr. 652-653, 778-770. One of the tellers then informed Loretta that a currency transaction report would have to be filed. Loretta cancelled the transaction and left. Tr. 654-657, 780, 787. Waldemar took his money and left without completing the transaction. Tr. 786-787.

Petitioners' activities in South Lake Tahoe were not charged as structuring offenses; instead, they formed the basis of the charge of interstate travel in aid of unlawful activity in Count 6 of the indictment. J.A. 14-15.

After acquiring the various cashier's checks, petitioners went back to the High Sierra and made a partial payment on their debt. Waldemar paid \$76,000 in cashier's checks, \$60,000 in chips, and \$4,000 in money on deposit with the casino. Tr. 396-398. The next day, the balance was paid. Tr. 401.¹⁰

¹⁰ Soon after petitioners returned to their residence in Portland, Oregon, they engaged in several similar transactions to pay off other gambling debts. Tr. 806-807, 816-818, 825-827, 845-849, 937-939, 940-946.

2. At trial, the district judge gave the jury the following instructions on the structuring charges:

The essential elements required to be proven beyond a reasonable doubt in order to establish the offenses * * * which are violations of [31 U.S.C. 5322(a) and 5324(3)] * * * are as follows:

First, [petitioners] had knowledge of a financial institution's duty to report currency transactions in excess of ten thousand dollars.

Second, with such knowledge, [petitioners] knowingly and willfully structured or assisted in structuring or attempted to structure or assist in structuring a currency transaction.

Third, the purpose of the structured or attempted transaction was to evade the transaction reporting requirements.

And, fourth, the structured transactions involved one or more domestic financial institutions.

An act is * * * done knowingly and willfully for the purpose of [31 U.S.C. 5322(a) and 5324(3)] if [petitioners], with knowledge of a financial institution's duty to report currency transactions in excess of ten thousand dollars, voluntarily or intentionally structured or assisted in the structuring or attempted to structure or assist in the structuring [of] a currency transaction with the purpose of evading the currency reporting requirement.

The government does not have to prove that [petitioners] knew the structuring was unlawful[,] nor does the government have to prove that [petitioners] knew of the existence of the law which they are charged with breaking, [31 U.S.C. 5322(a) and 5324(3)]. However, if a

[petitioner] did not have knowledge of a bank's duty to report currency transactions in excess of ten thousand dollars, that may be considered a defense.

It is not a defense that [petitioners] did not know that structuring itself is a violation of law or of the existence of [31 U.S.C. 5322(a) and 5324(3)].

If you find that structuring occurred, and was knowingly and willfully engaged in by defendants for the specific purpose of evading a reporting requirement that was known by the defendants to exist, that is sufficient.

Only a person who has deliberate intention to frustrate the reporting by the banks can be guilty of the offense of structuring.

Tr. 2126-2127; J.A. 27-29.

3. In affirming petitioners' convictions, the court of appeals held that a willful violation of the anti-structuring statute requires proof that petitioners structured currency transactions with the intent to evade reporting requirements imposed by law, but that knowledge that structuring is illegal is not necessary for conviction. The court reasoned that "knowledge of illegality is not required to convict for 'structuring' because such conduct is 'affirmative' and 'demonstrate[s] an awareness of the legal framework relative to currency transactions which, it is reasonable to conclude, should * * * alert[] [the defendant] to the consequences of his conduct.'" J.A. 60 (quoting *United States v. Scanio*, 900 F.2d 485, 490 (2d Cir. 1990)).

As the court further explained, "[i]f a defendant knows that the bank must report a currency transaction and then intentionally acts in a way to prevent

that, he has acted 'willfully.'" J.A. 68. "There is no danger that someone who does *not* know of the reporting requirements could be convicted under that *mens rea* standard; nor is there any way that one who knows of the reporting requirements but who *does not intend* to prevent such reporting can be convicted of structuring." *Id.* at 68-69. No one can be convicted of violating Section 5324(3), the court concluded, "unless he or she knows of the reporting requirements *and* * * * he or she is doing something to prevent such reporting." J.A. 69.

The court observed that nothing in the language or history of Section 5324(3) suggests that the statute requires knowledge that structuring is illegal. The court noted that Section 5324(3) was enacted in 1986 because several courts of appeals had held that it was not unlawful to structure currency transactions to avoid federal reporting requirements. The court explained that Section 5324(3) was designed to overturn the effect of those decisions and confirm the rulings of other courts that structuring of currency transactions constituted a criminal offense. J.A. 66-67.

The court of appeals also emphasized there was no risk that petitioners had been convicted for "innocent" conduct. It observed that petitioners "took no steps to ensure that the IRS would be aware of the assets used to purchase the cashiers checks; denied that they earned money gambling when in fact they had done so; denied any failure to report gambling income; and apparently hid large amounts of currency in or near their homes." J.A. 69. Hence, petitioners could not be "compared to an individual involved in perfectly ordinary business transactions who unconsciously breaks the currency laws." *Ibid.*

SUMMARY OF ARGUMENT

A. In 1970, Congress enacted legislation that, *inter alia*, requires domestic financial institutions or their customers to file currency transaction reports under circumstances prescribed by the Secretary of the Treasury. 31 U.S.C. 5313(a). Under implementing regulations, a financial institution must file a currency transaction report for any cash transaction in excess of \$10,000. Although Congress prescribed criminal penalties for anyone “willfully violating” the reporting requirements of the Act, 31 U.S.C. 5322, it initially did not provide a mechanism to prevent the evasion of the reporting requirements of Section 5313(a). In 1986, Congress filled that gap by enacting 31 U.S.C. 5324, which states that no person shall, “for the purpose of evading the reporting requirements” of Section 5313(a), cause a financial institution to fail to file a currency transaction report or to file a false report, or “structure or assist in structuring” a transaction with a financial institution.

B. Petitioners contend that a “willful” violation of Section 5324 requires proof that a defendant not only (A) knew of the reporting requirements and (B) acted with the intent to evade them, but also (C) knew that it was unlawful to do so. We believe—and ten courts of appeals have held—that a criminal violation of the anti-structuring provision of Section 5324 does not require proof of knowledge that purposeful structuring is prohibited.

As this Court has repeatedly held, the element of willfulness in a criminal statute requires proof of a purpose to do wrong or an evil motive to do that which the law condemns. Consistent with the gen-

eral rule that ignorance of the law is no excuse, however, the willfulness requirement does not ordinarily require proof that the defendant knew that he was violating the law. Although the Court has in some contexts held that the element of willfulness requires proof of an intentional violation of a known legal duty, that requirement has been invoked only when it has been needed to ensure that the defendant has acted with the requisite wrongful purpose.

In the present context, a violation of the anti-structuring statute itself satisfies the “bad purpose” required for a willful violation because Section 5324 explicitly defines the wrongful purpose necessary to violate the law—a purpose to evade the reporting requirements of Section 5313(a). When a person acts with knowledge of the bank’s reporting requirements and an intent to evade them, he has acted willfully by exhibiting the very purpose to do wrong that Section 5324 condemns. The jury instructions in this case made clear that the offense required proof of a “bad purpose”: the court advised the jury that only a person having the deliberate intention to frustrate the reporting by the banks can be guilty of the offense of structuring.

C. The legislative history confirms that a willful violation of the anti-structuring statute does not require proof that the defendant was aware of the unlawfulness of purposeful structuring. Prior to 1986, the government sought to combat purposeful evasion of the reporting requirements by prosecuting structuring under the federal false-statement statute, 18 U.S.C. 1001, and the aiding-and-abetting statute, 18 U.S.C. 2(b). Some courts of appeals held that those provisions applied when a currency transaction re-

port would have been filed but for the fact that purposeful structuring concealed material facts from the bank. Under those cases, criminal liability attached when the defendant knew of the reporting requirements and acted with the purpose to evade them. See, e.g., *United States v. Tobon-Builes*, 706 F.2d 1092 (11th Cir. 1983). At the same time, other courts of appeals concluded either that the Act and its implementing regulations did not impose a duty not to structure or that criminal liability was available only with respect to limited forms of structuring.

The legislative reports relating to the 1986 enactment of the anti-structuring statute make clear that Congress intended to adopt the approach of *Tobon-Builes* and reject the cases that conflicted with that decision. Because *Tobon-Builes* required knowledge of the reporting requirements and an intent to evade them—not knowledge that purposeful evasion of those requirements was unlawful—it is highly unlikely that Congress in 1986 intended to adopt the more stringent intent requirement advanced by petitioners here. That conclusion is reinforced, moreover, by Congress's 1992 amendment of Section 5324, which retained the anti-structuring language intact (and applied it to a new context) at a time when the courts of appeals had uniformly interpreted it not to require specific knowledge that structuring is unlawful.

D. Petitioners' arguments based on the language and structure of the anti-structuring statute are unpersuasive. Contrary to petitioners' contention, the fact that the "willfulness" requirement is found in Section 5322(a) does not mean that the elements set forth in Section 5324(3) do not constitute a willful offense. Section 5322(a) merely provides that a crim-

inal violation of subchapter II of Chapter 53 of Title 31 requires proof of willfulness. Unlike many of the other provisions of that subchapter, the anti-structuring provision of Section 5324(3) itself describes willful conduct and does not require an additional element to satisfy the willfulness requirement of Section 5322(a).

E. Because the language of the anti-structuring provision, the structure of the subchapter of Title 31 governing reporting requirements, and the legislative history all demonstrate that a criminal violation of the anti-structuring law does not require knowledge of unlawfulness, the rule of lenity does not apply. In addition, the interpretation advanced here does not raise constitutional doubts about the omission of a scienter requirement; a criminal violation of the anti-structuring statute requires knowledge of the reporting requirements and a purpose to evade them, which satisfies any constitutional scienter requirement.

ARGUMENT

THE ANTI-STRUCTURING STATUTE REQUIRED THE GOVERNMENT TO PROVE THAT PETITIONERS KNEW OF THE BANK REPORTING REQUIREMENTS AND ACTED TO EVADE THEM, NOT THAT THEY SPECIFICALLY KNEW THAT STRUCTURING IS UNLAWFUL

A. The Statutory Framework

In 1970, Congress enacted legislation designed to respond to the increased use of financial institutions by those engaged in criminal activity. See H.R. Rep. No. 975, 91st Cong., 2d Sess. 10 (1970); S. Rep. No. 1139, 91st Cong., 2d Sess. 2-4 (1970). The new legislation, the Currency and Foreign Transactions Reporting Act (Bank Secrecy Act), Pub. L. No. 91-508, Tit. II, 84 Stat. 1118, required financial institutions to maintain reports of transactions where such reports “have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.” 31 U.S.C. 5311; see *California Bankers Ass’n v. Shultz*, 416 U.S. 21, 37 (1974). To that end, Congress enacted a variety of reporting requirements pertaining to foreign and domestic financial transactions.

Of central relevance here is the provision governing domestic financial transactions. See Pub. L. No. 91-508, Tit. II, § 221, 84 Stat. 1122. As presently codified at 31 U.S.C. 5313(a), that provision requires that when a domestic financial institution engages in a currency transaction under circumstances prescribed by the Secretary of the Treasury, the financial institution or “any other participant in the transaction” must file a report in the manner prescribed by the Secretary. Although Section 5313(a) contemplates that a report may be required of any partici-

pant in the transaction, the Secretary’s implementing regulations make the financial institution rather than the customer responsible for filing the report. See 31 C.F.R. 103.22(a). Under those regulations, a financial institution is required to report only unusually large cash transactions—any “deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$10,000.” 31 C.F.R. 103.22(a)(1).¹¹

As part of the 1970 legislation, Congress established an enforcement mechanism that includes criminal penalties for anyone “willfully violating” the Act’s reporting requirements. 31 U.S.C. 5322; see Pub. L. No. 91-508, Tit. II, § 209, 84 Stat. 1121.¹² The criminal penalty section is a general provision applicable to violations of the subchapter of Title 31 that includes the currency transaction reporting requirements, and any violation of the regulations promulgated under that subchapter. 31 U.S.C. 5322(a).¹³

¹¹ The regulations contain exemptions for large transactions in cash that occur in the ordinary course of business. See 31 C.F.R. 103.22(b). For example, a bank may exempt the deposits of retailers whose sales are “in substantial portions by currency” if those deposits do not exceed amounts “commensurate with the customary conduct of the lawful, domestic business of that customer.” 31 C.F.R. 103.22(b) (2) (i) and (c).

¹² Congress has also authorized civil penalties in the case of willful violations of the reporting provisions. 31 U.S.C. 5321; see Pub. L. No. 91-508, Tit. II, § 207, 84 Stat. 1120.

¹³ The criminal provisions of Section 5322(a) contain one exception; they do not apply to the reporting requirements for foreign currency transactions in 31 U.S.C. 5315.

Sixteen years later, Congress enacted the anti-structuring provision that is at issue here, 31 U.S.C. 5324, in order to fill a gap in the enforcement structure of the Act. See Money Laundering Control Act of 1986, Pub. L. No. 99-570, Tit. I, Subtit. H, § 1354(a), 100 Stat. 3207-22; see also H.R. Rep. No. 746, 99th Cong., 2d Sess. 18-19 (1986); S. Rep. No. 433, 99th Cong., 2d Sess. 22 (1986). Prior to that time, no statutory provision explicitly prohibited a person from causing a bank to fail to file a currency transaction report or structuring his financial transactions to evade the reporting requirements imposed under Section 5313(a).¹⁴ To address that concern, Congress enacted 31 U.S.C. 5324, which provides that no person shall, “for the purpose of evading the reporting requirements” of 31 U.S.C. 5313(a), cause a financial institution to fail to file a currency transaction report or to file a false report, or “structure or assist in structuring” a transaction with a financial institution.

The narrow question in this case is whether “willfully violating” (31 U.S.C. 5322(a)) the anti-structuring provision in Section 5324 requires proof

¹⁴ Structuring occurs when a person “conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements.” 31 C.F.R. 103.11(p). In its most common form, structuring entails “breaking down * * * a single sum of currency exceeding \$10,000 into smaller sums” at or below \$10,000 for the purpose of evading the reporting requirements under Section 5313(a). 31 C.F.R. 103.11(p). It also may involve conducting a currency transaction or series of transactions at or below \$10,000 for the same purpose. *Ibid.*

that a defendant not only knew of the currency reporting requirements in Section 5313(a) and structured his transactions with the purpose to evade them, but also specifically knew that it was against the law to do so. We submit—and ten courts of appeals agree—that the requisite mental element is satisfied by proof that a defendant (1) knew of the reporting requirements for currency transactions in excess of \$10,000 and (2) acted with the intent to evade them.¹⁵ That conclusion is consistent not only with this Court’s cases interpreting the “willfulness” requirement in other federal criminal statutes, but also with the basic principle of criminal law that ignorance of the law will not excuse its violation.

¹⁵ Every court of appeals to address the issue, except the First Circuit, has agreed with the court below that the government need not prove knowledge of the prohibition against structuring in order to make out a criminal violation of the anti-structuring statute. See, e.g., *United States v. Scanio*, 900 F.2d 485, 489-492 (2d Cir. 1990); *United States v. Shirk*, 981 F.2d 1382, 1389-1392 (3d Cir. 1992), petition for cert. pending, No. 92-1841; *United States v. Rogers*, 962 F.2d 342, 343-345 (4th Cir. 1992); *United States v. Beaumont*, 972 F.2d 91, 93-95 (5th Cir. 1992); *United States v. Baydoun*, 984 F.2d 175, 180 (6th Cir. 1993); *United States v. Jackson*, 983 F.2d 757, 767 (7th Cir. 1993); *United States v. Gibbons*, 968 F.2d 639, 643-645 (8th Cir. 1992); *United States v. Hoyland*, 914 F.2d 1125, 1128-1130 (9th Cir. 1990); *United States v. Dashney*, 937 F.2d 532, 537-540 (10th Cir.), cert. denied, 112 S. Ct. 402 (1991); *United States v. Brown*, 954 F.2d 1563, 1567-1569 (11th Cir.), cert. denied, 113 S. Ct. 284 (1992). Contra *United States v. Aversa*, 984 F.2d 493 (1st Cir. 1993) (en banc).

B. The “Willfulness” Requirement In This Context Does Not Justify A Departure From The General Rule That Ignorance Of The Law Does Not Excuse Criminal Conduct

This Court has observed that “willfully” is “a word of many meanings,” and “its construction [is] often * * * influenced by its context.” *Spies v. United States*, 317 U.S. 492, 497 (1943). When used in a criminal statute, however, “it generally means an act done with a bad purpose.” *United States v. Murdock*, 290 U.S. 389, 394-395 (1933). See also *Felton v. United States*, 96 U.S. 699, 702 (1878) (the term “willfully” in “the ordinary sense in which it is used in statutes” means acting “with a bad purpose” or with “evil intent”). The requirement of a “bad purpose” means that more is required than simply “the doing of the act proscribed by the statute.” *Screws v. United States*, 325 U.S. 91, 101 (1945) (plurality opinion). Instead, “[a]n evil motive to accomplish that which the statute condemns becomes a constituent element of the crime.” *Ibid.* See also *Potter v. United States*, 155 U.S. 438, 446 (1894) (willful violation of statute prohibiting bankers from overdrawing checks requires a “purpose to evade or disobey the mandates of the law” and implies “knowledge and a purpose to do wrong”); *Spurr v. United States*, 174 U.S. 728, 734-735 (1899) (same).

While the term “willfully” normally requires proof that the defendant acted with knowledge of the pertinent facts and a bad purpose to do the unlawful act, it does not ordinarily require proof that the defendant knew his conduct violated the law—a principle sometimes summarized in the maxim that “ignorance of the law” is no excuse. *Cheek v. United States*, 498

U.S. 192, 199 (1991). See also *Lambert v. California*, 355 U.S. 225, 228 (1957); *Shevlin-Carpenter Co. v. Minnesota*, 218 U.S. 57, 68 (1910); *Barlow v. United States*, 32 U.S. (7 Pet.) 404, 410-412 (1833). That rule, of course, is “deeply rooted in the American legal system,” and this Court has applied it “in numerous cases construing criminal statutes.” *Cheek*, 498 U.S. at 199, citing *Hamling v. United States*, 418 U.S. 87, 119-124 (1974); *United States v. International Minerals & Chemical Corp.*, 402 U.S. 558, 562-565 (1971); and *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 342-343 (1952).¹⁶

On occasion, criminal statutes—including some requiring proof of “willfulness”—have been understood to require proof of an intentional violation of a known legal duty, *i.e.*, specific knowledge by the defendant that his conduct is unlawful. But where that construction has been adopted, it has been invoked only to ensure that the defendant acted with a wrong-

¹⁶ Consistent with that principle, the drafters of the Model Penal Code concluded that “[a] requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements appears.” Model Penal Code and Commentaries § 2.02(8), at 227 (Official Draft and Revised Comments 1985); accord, *e.g.*, *American Surety Co. v. Sullivan*, 7 F.2d 605, 606 (2d Cir. 1925) (L. Hand, J.) (the term “willful” in criminal statutes “means no more than that the person charged with the duty knows what he is doing,” not that “he must suppose that he is breaking the law”) (citing cases). The Model Penal Code’s distillation of the willfulness requirement “follows many judicial decisions as well as legislation in a number of states.” Model Penal Code and Commentaries, *supra*, § 2.02 comment 10, at 248 & nn.44-45 (citing authorities).

ful purpose. See *Liparota v. United States*, 471 U.S. 419, 426 (1985) (requiring proof of knowledge of regulations governing use of food stamps because, without such a requirement, the statute could punish “a broad range of apparently innocent conduct”); cf. *Lambert v. California*, 355 U.S. at 229 (requiring knowledge of city’s registration requirement for newly arrived ex-felons as a constitutional matter, where “circumstances which might move one to inquire as to the necessity of registration [were] completely lacking”).

Criminal tax cases are the primary example of the Court’s occasional construction of the term “willfulness” to require knowledge of the law. Noting the special complexity of the tax laws, the Court has held that a defendant charged with a tax crime must be aware that his conduct is unlawful before he may be held criminally liable. See, e.g., *Cheek*, 498 U.S. at 199-200; *United States v. Bishop*, 412 U.S. 346, 360-361 (1973).

Even in the tax cases, however, the Court has been careful to acknowledge the usual rule that knowledge of the law is not an element of proof in criminal cases, and to note that the construction of the term “willfully” in criminal tax statutes “carv[ed] out an exception to the traditional rule.” *Cheek*, 498 U.S. at 200. The requirement of an “intentional violation of a known legal duty,” the Court has explained, is merely a “refine[ment],” for the criminal tax context, of the general principle that “willfully” means acting with “a bad purpose” or “an evil motive.” *Cheek*, 498 U.S. at 200, 201. See also *United States v. Pomponio*, 429 U.S. 10, 12

(1976) (per curiam); *United States v. Bishop*, 412 U.S. at 360.¹⁷ Where the proof of a bad purpose is supplied in other ways, it is not necessary to require proof that the defendant was aware that the law specifically prohibited his conduct.

The anti-structuring statute, 31 U.S.C. 5324, satisfies the “bad purpose” component of willfulness by explicitly defining the wrongful purpose necessary to violate the law: it requires proof that the defendant acted with the purpose to evade the reporting requirement of Section 5313(a). The language of Section 5313(a) makes plain, and the legislative history confirms (H.R. Rep. No. 975, *supra*, at 10), that the purpose of the currency transaction reporting re-

¹⁷ Petitioners argue (Pet. Br. 20 n.11, 25 n.17) that in *United States v. Pomponio*, *supra*, this Court rejected “bad purpose” as a component of “willfulness” not only for tax cases but for all other purposes as well. In *Pomponio*, the Court held that in the context of criminal tax statutes, the term “willfully” should be interpreted to mean “a voluntary, intentional violation of a known legal duty.” 429 U.S. at 12. The Court made clear, however, that its construction of the term “willfully” was applicable only in the context of criminal tax statutes. See *ibid.* (referring to “the meaning of willfulness in [26 U.S.C.] § 7206 and related statutes,” the meaning of willfulness “in this context,” and the meaning of the word willfully “in these statutes”). *Pomponio* thus did not make a sweeping change in the Court’s approach to the concept of “willfulness” in all contexts, but merely reaffirmed prior decisions indicating that in the criminal tax context the “bad purpose” generally required for proof of willfulness must be established by proof of an intentional violation of a known legal duty. Conversely, as we have noted, the Court has in some cases required proof of an intentional violation of a known legal duty in statutes that do not have a “willfulness” requirement. See, e.g., *Liparota v. United States*, *supra*; *Lambert v. California*, *supra*.

quirements is to provide the government with information about individuals engaging in abnormally large currency transactions, which often are associated with criminal activity such as narcotics trafficking and tax evasion. Section 5324 does not contain its own reporting requirement, but enforces the reporting requirements of Section 5313(a) by specifically prohibiting the structuring of currency transactions “for purposes of evading the reporting requirements of [S]ection 5313(a).” Thus, if a person acts with knowledge of the reporting requirements and a specific intent to evade them, he has acted willfully because he has exhibited the “purpose to do wrong” (*Potter*, 155 U.S. at 446) that Section 5324 condemns.¹⁸

The jury instructions given in this case make that point clear. The court required the jury to find that petitioners “knowingly and willfully engaged in” structuring and that they did so “for the specific purpose of evading a reporting requirement that was

¹⁸ Neither *Potter v. United States*, *supra*, nor *Screws v. United States*, *supra*, undermines this analysis. *Potter* construed the term “willfully” to require proof of “knowledge and a purpose to do wrong,” but did not require specific awareness of the law prohibiting the conduct at issue. In *Potter*, the Court simply held that evidence of the defendant’s good faith was admissible on the question whether the defendant had a “purpose to do wrong.” 155 U.S. at 446-447. Likewise, the plurality in *Screws* construed the term “willfully” in the criminal civil rights statute to require proof of intent to deprive a victim of a right specifically recognized in the Constitution or decisions construing it. The Court did not, however, require proof that the defendant knew that the United States Code (or any other law) made that conduct a crime.

known by [petitioners] to exist.” J.A. 29. The court then emphasized that point by adding: “Only a person who has deliberate intention to frustrate the reporting by the banks can be guilty of the offense of structuring.” *Ibid.* Thus, in the context of structuring prosecutions, and in this case in particular, the “bad purpose” required by the element of willfulness comes from the “deliberate intention to frustrate” the banks’ performance of their reporting duty—a duty of which petitioners were aware.

When a defendant employs an artifice for the specific purpose of depriving the government of information to which it is entitled, there is no basis for concluding that he is in some sense engaged in “innocent conduct.” For that reason, this Court has never held, in cases involving the use of deceptive practices in relation to the government, that a “willfulness” requirement calls for proof that the defendant knew that his conduct was unlawful. In *Browder v. United States*, 312 U.S. 335, 341 (1941), for example, the Court held that the crime of “willfully and knowingly” using a passport secured by false statement simply required a use that was “deliberate[] and with knowledge and not something which is merely careless or negligent or inadvertent.” The Court did not suggest that the defendant was required to know, in addition, that it was unlawful to use a falsely obtained passport.

In *United States v. Yermian*, 468 U.S. 63 (1984), the Court took a similar approach in construing the federal false-statement statute, 18 U.S.C. 1001, which holds criminally liable anyone who, “in any matter within the jurisdiction” of a federal agency, “knowingly and willfully” makes a false or fraudulent state-

ment. In *Yermian*, the Court held that a defendant could violate Section 1001 without knowing that his false statement pertained to a matter within the jurisdiction of a federal agency. 468 U.S. at 69-70. That conclusion necessarily indicates that the defendant did not have to know that his conduct was criminal.¹⁹

Petitioners argue (Br. 27-30) that even though they may have acted with intent to evade the known reporting requirements of Section 5313(a), they were not engaged in morally culpable conduct (and thus did not act willfully), because much of what Section 5324 refers to as “evasion” is in fact innocent conduct that is more properly referred to as “avoidance.” But when a person is aware that a currency transaction reporting requirement will be triggered by an anticipated transaction, and he artificially restructures the transaction for the specific purpose of depriving the government of the information that Sec-

¹⁹ Although the Court was influenced by the fact that the “knowing[] and willful[]” requirement followed, and therefore did not modify, the jurisdictional phrase (*Yermian*, 468 U.S. at 69), the decision is nonetheless pertinent here. If a “willfulness” requirement called for the intentional violation of a known legal duty, it would not matter where the jurisdictional element was situated; a defendant could not violate Section 1001 unless he knew that his conduct was unlawful, which would require knowledge of the federal interest. We note that because the government in *Yermian* did not object at trial to an instruction requiring the jury to find that the defendant “knew or should have known” that the matter was within the jurisdiction of a federal agency, the Court did not have occasion to decide whether such an instruction was improper. *Yermian*, 468 U.S. at 75 n.14. The Court did, however, make clear that actual knowledge of the jurisdictional fact was unnecessary.

tion 5313(a) is designed to obtain,²⁰ his conduct can hardly be equated with the kind of “apparently innocent conduct” (*Liparota*, 471 U.S. at 426) that has led this Court to require knowledge of the law as a precondition to conviction. Because “structuring is not the kind of activity that an ordinary person would engage in innocently,” *United States v. Hoyland*, 914 F.2d 1125, 1129 (9th Cir. 1990), it is reasonable to hold a structurer responsible for evading the reporting requirements without the need to prove specific knowledge that such evasion is unlawful. See *United States v. Shirk*, 981 F.2d 1382, 1391 (3d Cir. 1992), petition for cert. pending, No. 92-1841; *United States v. Scanio*, 900 F.2d at 490; cf. *United States v. International Minerals & Chemical Corp.*, 402 U.S. at 565.

Petitioners make the separate argument (Br. 37-40) that the term “evading,” as used in Section 5324, is too broad, apparently because it includes not only deceptive conduct that causes a bank not to file a report that it is required to file, but also conduct that results in the bank’s not incurring a filing obligation at all—such as arranging deposits or withdrawals to avoid the \$10,000 reporting threshold for a single day’s transactions with a single institution. Evasion,

²⁰ Petitioners suggest that the government has no interest, under the statute or implementing regulations, in obtaining information about “structured” transactions, because the regulations require currency transaction reports only for cash transactions aggregating to more than \$10,000 with a single bank on a single day. That, however, is not the limit of the government’s regulatory interest in information about large cash transactions. The Treasury Department has directed banks to report to the IRS suspicious transactions that appear to involve purposeful structuring, such as the daily purchase of between \$9,000 and \$9,900 in cashier’s checks by the same person. See 53 Fed. Reg. 40,064 (1988).

however, encompasses more than deceiving or inducing a bank into not complying with its reporting obligations. Arranging a series of transactions for the purpose of circumventing the currency reporting requirements constitutes evasion even if the effect of the scheme is to relieve the bank of any reporting responsibility. See 31 C.F.R. 103.11(p); 54 Fed. Reg. 3026 (1989).²¹ Indeed, because a bank is not required to file a currency report unless it *knows* that a series of transactions amounting to more than \$10,000 are related, see 31 C.F.R. 103.22(a)(1), even the commonplace device of "splitting up" deposits or withdrawals into accounts of less than \$10,000 would not constitute "evasion" under a narrow definition of that term, because the defendant's conduct would prevent the bank from ever incurring an obligation to report the transaction. In light of the purpose of the statute to ensure that the government obtains information

²¹ The structure of Section 5324 confirms that interpretation of "evasion." Section 5324(1) provides that no person shall "for the purpose evading the reporting requirements" cause a bank "to fail to file a report required under" Section 5313(a). If "evasion" were limited to circumstances in which a person deceives or induces a bank into not complying with reporting requirements that have actually been triggered, every instance of prohibited "evasion" would be covered by Section 5324(1). And Section 5324(3)—which prohibits the "structur[ing]" of currency transactions "for the purpose of evading the reporting requirements" of Section 5313(a)—would be superfluous. In addition, the legislative reports relating to the 1986 enactment of Section 5324 make clear that it "create[s] the offense of structuring a transaction to evade the reporting requirements, without regard to whether an individual transaction is, itself, reportable under the Bank Secrecy Act." S. Rep. No. 433, *supra*, at 22; H.R. Rep. No. 746, *supra*, at 19.

about large cash transactions, conduct that is specifically designed to deprive the government of that information is "evasion" and evinces a "bad purpose" sufficient to satisfy the willfulness requirement.²²

In any event, petitioners' complaint about the unduly broad scope of the concept of evasion is misplaced, since they were clearly involved in evasion in even the narrowest sense of the term. Each of the substantive counts and each of the pertinent overt acts of the conspiracy count charged them with "splitting up" their cashier's check purchases from the same bank on the same day so that the bank would not make a report that it was legally required to make. In several instances when the bank officials recognized what petitioners were doing, they advised petitioners that they would have to file a report anyway, and upon being so advised, petitioners declined to complete the purchase. This is therefore a garden variety case of evasion, and there accordingly can be no doubt that the "bad purpose" generally required to satisfy the element of willfulness was present here.

²² Petitioners complain (Br. 39) that defining the term "evasion" to include structuring transactions so that the bank will not incur a reporting obligation would put at risk legitimate businessmen with substantial cash receipts who choose to deposit those receipts frequently, rather than occasionally. That is not so. If a person conducts frequent cash transactions for legitimate business reasons—rather than to circumvent the currency transaction reporting requirements—the person is not engaged in "evasion." See *United States v. Brown*, 954 F.2d at 1571; S. Rep. No. 433, *supra*, at 22 ("A person conducting the same transactions for any other reasons * * * would not be subject to liability.").

C. The Legislative History Of Section 5324 Confirms That The Government Was Not Required To Prove That Petitioners Knew That Structuring Is Unlawful

1. The legislative history confirms that a willful violation of Section 5324 requires proof that the defendant knew of the reporting requirements and acted with the intent to evade them, but does not require proof that the defendant was aware of the anti-structuring law.

Prior to 1986 the currency reporting requirements included no explicit prohibition against structuring transactions to evade the reporting requirements. The government accordingly sought to combat the purposeful evasion of the reporting requirements using both 18 U.S.C. 1001, which prescribes criminal penalties for anyone who "knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact" in a matter within the jurisdiction of a federal agency; and 18 U.S.C. 2(b), which imposes criminal liability upon any person who "willfully causes an act to be done which if directly performed by him or another would be an offense" under federal law.

Some courts of appeals held that those provisions applied where a currency transaction report would have been filed but for the defendant's purposeful structuring, which concealed material facts from the bank. See, e.g., *United States v. Tobon-Builes*, 706 F.2d 1092, 1096-1101 (11th Cir. 1983); *United States v. Heyman*, 794 F.2d 788, 790-793 (2d Cir.), cert. denied, 479 U.S. 989 (1986). As the leading case for that position explained, a defendant was criminally liable if he "knew about the currency reporting requirements and * * * purposely sought to prevent the financial institutions from filing required reports

* * * by structuring his transactions as multiple smaller transactions under \$10,000." *Tobon-Builes*, 706 F.2d at 1101.

Other courts rejected the government's efforts to punish structuring under Sections 1001 and 2(b). Those courts found (1) that the Act and implementing regulations simply did not impose a duty not to structure, see, e.g., *United States v. Varbel*, 780 F.2d 758, 760-763 (9th Cir. 1986); *United States v. Anzalone*, 766 F.2d 676, 679-683 (1st Cir. 1985); or (2) that criminal liability was confined to narrowly-limited forms of structuring, see, e.g., *United States v. Denemark*, 779 F.2d 1559, 1561-1564 (11th Cir. 1986) (no liability under Section 1001 because defendant had no cash transaction over \$10,000 with any one bank).

The Money Laundering Control Act of 1986 adopted the anti-structuring provision at issue here. Pub. L. No. 99-570, Tit. I, Subtit. H, § 1354(a), 100 Stat. 3207-22. The legislative reports relating to the 1986 enactment of Section 5324 indicated that Congress intended to codify *Tobon-Builes* and in effect overrule the contrary cases. As explained by the Senate Report accompanying a prior bill that incorporated what would become Section 5324:

Subsection (h) [Section 5324] would codify *Tobon-Builes* and like cases and would negate the effect of *Anzalone*, *Varbel* and *Denemark*. It would expressly subject to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact. In addition, the proposed amendment would create the offense

of structuring a transaction to evade the reporting requirements, without regard to whether an individual transaction is, itself, reportable under the Bank Secrecy Act.

S. Rep. No. 433, *supra*, at 22; see *id.* at 38 (anti-structuring language); see also H.R. Rep. No. 746, *supra*, at 18-19 & n.1 (favorably citing *Tobon-Builes* and explaining that the new provision “would resolve the legal issues raised by the various circuit courts” and “create the offense of structuring a transaction to evade the reporting requirements”).

Tobon-Builes held that the defendant’s willfulness was established by proof that he knew about the reporting requirements and structured his transactions with the intent to keep the financial institution from filing the required reports. 706 F.2d at 1101. The defendant was held accountable for structuring his transactions without regard to his knowledge of the illegality of his conduct. It is therefore significant that the legislative reports on the anti-structuring statute endorsed the approach of the *Tobon-Builes* decision. As one court of appeals explained, “[i]t is highly unlikely that in passing the anti-structuring law, and thereby providing even more notice than the defendant had in *Tobon-Builes*, Congress was somehow imposing an additional requirement that the defendant be aware of the illegality of his or her conduct.” *United States v. Brown*, 954 F.2d 1563, 1569 (11th Cir.), cert. denied, 113 S. Ct. 284 (1992); accord, e.g., *United States v. Scanio*, 900 F.2d at 491; *United States v. Shirk*, 981 F.2d at 1391.

The Senate Report also offered the following explanation of the intent required under the new structuring provision:

[A] person who converts \$18,000 in currency to cashier’s checks by purchasing two \$9,000 cashier’s checks at two different banks or on two different days *with the specific intent that the participating bank or banks not be required to file Currency Transaction Reports for those transactions, would be subject to potential civil and criminal liability*. A person conducting the same transactions for any other reasons or a person splitting up an amount of currency that would not be reportable if the full amount were involved in a single transaction (for example, splitting \$2,000 in currency into four transactions of \$500 each), would not be subject to liability under the proposed amendment.

S. Rep. No. 433, *supra*, at 22 (emphasis added). Significantly, the only state-of-mind requirement mentioned is the “specific intent” to prevent a bank from filing currency transaction reports. Given the background rule that knowledge of the law is not an essential element of a criminal offense, the committee’s reference to the requisite “specific intent”—without mentioning any requirement of knowledge of the anti-structuring law—confirms that there is no basis for engrafting that additional element onto the offense.²³

²³ Petitioners note (Br. 44) that there were proposals to replace the term “willfully” with the term “knowingly” in amending the Bank Secrecy Act. See H.R. Rep. No. 855, 99th Cong., 2d Sess. Pt. 1, at 7, 21-22 (1986); H.R. Rep. No. 746, *supra*, at 28-29, 41. They contend (Br. 44) that Congress’s failure to change the state-of-mind requirement in the Act’s remedial provisions ratified prior cases holding that a defendant must know of the reporting requirements in order to commit a willful violation of the Act. But that inference would not support petitioners; to the contrary, it

2. Congress's recent amendment of Section 5324 confirms the validity of the interpretation advanced here. On October 28, 1992, Congress enacted the Annunzio-Wylie Anti-Money Laundering Act. In pertinent part, that Act created a new anti-structuring provision for the reporting requirements under 31 U.S.C. 5316, which applies to international monetary instruments. See Pub. L. No. 102-550, Tit. XV, § 1525(a), 106 Stat. 4064-4065. Specifically, Congress amended Section 5324 by moving the anti-structuring provisions at issue here into a new subsection (a), and then creating a subsection (b), which prohibits structuring "for the purpose of evading the reporting requirements of section 5316." § 1525(a), 106 Stat. 4064-4065.

As this Court has explained, when Congress legislates with reference to an existing statute, it is presumed to be aware of the prevailing judicial interpretation of that statute. *Lorillard v. Pons*, 434 U.S. 575, 580 & n.7 (1978) (relying on uniform view of lower courts). When Congress amended Section 5324, every court to consider the issue had held that a willful violation of Section 5324(3) requires knowledge of the bank's reporting requirements and an intent to evade them. See, e.g., *United States v. Scanio*, 900 F.2d at 491; *United States v. Rogers*, 962 F.2d 342, 343-345 (4th Cir. 1992); *United States v. Beaumont*, 972 F.2d 91, 93-95 (5th Cir. 1992); *United States v. Gibbons*, 968 F.2d 639, 643-645 (8th Cir. 1992); *United States v. Hoyland*, 914 F.2d at 1128-1130; *United States v. Dashney*, 937 F.2d 532, 537-540

is entirely consistent with our submission that under the 1986 Act, a defendant must know of the reporting requirements before he can willfully violate them.

(10th Cir.), cert. denied, 112 S. Ct. 402 (1991); *United States v. Brown*, 954 F.2d at 1567-1569. No court had held that, in addition, the defendant must know that his action was unlawful.²⁴ Moreover, in the House Report accompanying a prior bill containing the pertinent provision, the committee noted:

Under the new provision, codified as subsection (b) of section 5324, it would be illegal to structure the importation or exportation of monetary instruments with the intent to evade the * * * reporting requirement. As is the case presently for structuring cases involving currency transaction reports, the government would have to prove that the defendant knew of the * * * reporting requirement, but would not have to prove that the defendant knew that structuring itself had been made illegal. *United States v. Hoyland*, 903 F.2d 1288 (9th Cir. 1990).

H.R. Rep. No. 28, 102d Cong., 1st Sess. Pt. 1, at 45 (1991). Thus, a significant amendment of Section 5324 left intact (and replicated) statutory language that had been construed by federal courts in the manner indicated above. That course of action suggests that Congress intended to preserve the existing construction of the state-of-mind requirement of Section 5324. See *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 381-382 (1982); *Keene Corp. v. United States*, 113 S. Ct. 2035, 2043 (1993).

²⁴ It was after the 1992 legislation had been enacted that the First Circuit held that a defendant must know or show reckless disregard for whether his actions were unlawful. See *United States v. Aversa*, *supra*.

D. Neither The Structure Of The Act Nor Other Analogous Statutes Indicate That The Anti-Structuring Statute Requires Proof Of Knowledge That Structuring Is Unlawful

1. Petitioners argue (Br. 9-12) that the expression “willfully violating this subchapter” in Section 5322(a) implies that there must be both “simple” violations and “willful” violations of the provisions of the subchapter, including Section 5324. The elements of Section 5324, standing alone, cannot make out willfulness, petitioners argue, because then there would be no difference between a simple violation of that statute and a willful violation.

The flaw in that argument is that it ignores not only the willful character of a violation of Section 5324, but also the generality of Section 5322(a). Section 5322(a) is a general provision that establishes a single standard of criminal liability—willfulness—for virtually all of the currency reporting provisions in subchapter II of Chapter 53 of Title 31. To conclude that one of several such provisions itself describes a “willful” offense does not make the “willfulness” requirement superfluous. In other words, the fact that criminal liability may not be imposed in the absence of willfulness does not mean that the mental state for each underlying offense to which Section 5322(a) applies must be less than willful.²⁵

²⁵ To illustrate, suppose the food stamp statute at issue in *Liparota* had prohibited a wide range of conduct including both the unauthorized receipt of food stamps and the use of food stamps to defraud the government. Suppose further that a general criminal provision of the statute made willful violations of any of those prohibitions a crime. The fact that the fraud provision already required proof of willfulness through proof of fraudulent intent would not mean

The same answer applies to petitioners’ argument (Br. 12-14) based on the contrast between Section 5322(a), which penalizes “willful[] violat[ions]” of Section 5324, and 18 U.S.C. 981(a)(1)(A), which authorizes the civil forfeiture of property that is “involved in a transaction or attempted transaction *in violation of section 5313(a) or 5324 of title 31.*”²⁶ (emphasis added). In contending that a “willful” violation of Section 5324 must require proof of more than a mere “violation,” petitioners once again misapprehend the role of Section 5322(a) in the scheme of reporting provisions. Section 5322(a) requires proof of willfulness as a precondition for a Title 31 criminal prosecution, but that is not to say that a violation of Section 5324 (as referred to, for example, in Section 981) is not “willful.” Conduct engaged in “for the purpose of evading” a known reporting requirement is willful conduct in the usual sense of that term, and the reference to willfulness in Section 5322(a) does not mean that Section 5324 must be read to describe a non-willful offense.²⁷

that the term “willfulness” in the general criminal provision would have to be read to require something more than intent to defraud.

²⁶ In 1992, 18 U.S.C. 981 was amended in a way that is not material here. See *Annunzio-Wylie Anti-Money Laundering Act*, Pub. L. No. 102-550, Tit. XV, § 1525(c)(1), 106 Stat. 4065. For convenience, we refer to the version in effect when the court of appeals rendered its decision.

²⁷ Unlike Section 5322(a), one of the civil penalty provisions applicable to violations of subchapter II refers specifically to “willful[]” violations of Section 5324. See 31 U.S.C. 5321(a)(4)(A). That language, however, mirrors the language in the general civil penalty provision, 31 U.S.C. 5321(a)(1), and like that provision it appears to be designed

2. Petitioners also err in relying (Br. 14, 42) on this Court's cases interpreting "willfulness" as used in the remedial provisions of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.*, and the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.* This Court has determined that a "willful" violation of the ADEA or the FLSA requires proof that the employer knew or showed reckless disregard for whether his conduct was prohibited by the pertinent statute. See *Hazen Paper Co. v. Biggins*, 113 S. Ct. 1701, 1708 (1993) (ADEA); *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988) (statute of limitations governing the FLSA); *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 126 (1985) (ADEA). The Court observed that that standard was designed to give effect to the two-tiered system of liability in both Acts by differentiating between ordinary and willful violations. *Hazen Paper*, 113 S. Ct. at 1709; *McLaughlin*, 486 U.S. at 132; *Thurston*, 469 U.S. at 128. That reasoning, however, has no application to the remedial scheme at issue here, since Sections 5322(a) and 5324(3) together define a single offense of willful evasion of the reporting requirements of Section 5313(a).

3. Finally, petitioners claim (Br. 14-15) that the test adopted by the majority of the circuits under Section 5324(3) is inconsistent with the longstanding test for "willfulness" employed with respect to violations of other reporting provisions in the relevant

simply to ensure that civil penalties will be imposed only upon a finding of willfulness. It does not suggest that Congress meant to require a more culpable mental state for civil and criminal penalties than the "purpose of evading" requirement that is found in Section 5324.

subchapter of Title 31. As concerns violations of the underlying reporting requirements, the courts of appeals have held that "willfulness" requires proof that the defendant had knowledge of the reporting requirements and an intent to violate them. See, e.g., *United States v. Eisenstein*, 731 F.2d 1540, 1543 (11th Cir. 1984) (bank's willful violation of reporting requirements of Section 5313); *United States v. Bank of New England, N.A.*, 821 F.2d 844, 854-857 (1st Cir.) (willful violation of Section 5313 requires knowledge of reporting requirements, which may be shown by "flagrant indifference"), cert. denied, 484 U.S. 943 (1987); *United States v. Dichne*, 612 F.2d 632, 636 (2d Cir. 1979) (knowing importation or exportation of monetary instruments in excess of threshold dollar amount under predecessor to 31 U.S.C. 5316), cert. denied, 445 U.S. 928 (1980); *United States v. Granda*, 565 F.2d 922, 926 (5th Cir. 1978) (same).

Those decisions are not inconsistent with the decision below. To prove a structuring violation under Section 5324, the government is required to prove knowledge of the pertinent reporting requirement—just as the cases construing Sections 5313 and 5316 have required for willful violations of those provisions. Knowledge of the reporting obligation is required because the reporting statutes contain no element of evasion or deceit and potentially affect "a broad range of apparently innocent conduct," *Liparota v. United States*, 471 U.S. at 426. See *United States v. Shirk*, 981 F.2d at 1390-1391; *United States v. Scanio*, 900 F.2d at 491. Section 5324, by contrast, satisfies the "bad purpose" component of willfulness by requiring proof of an intent to evade the currency

reporting requirements. For that reason, Section 5324 does not contain the additional requirements of knowledge that structuring is unlawful.

The parallel statute to Section 5324 therefore is not the reporting provisions, such as Section 5313 and Section 5316. Instead, the parallel to Section 5324 (now codified at Section 5324(a)) is the recently enacted statute (now codified at Section 5324(b)) that makes structuring unlawful when it is done to evade the reporting requirements of Section 5316. As we have noted above, the legislative history of that new structuring statute is quite explicit in stating that it is not necessary for the government to prove that the defendant knew that structuring had been made illegal. That is precisely the same standard that was adopted by the court of appeals in this case and the other nine courts of appeals that have agreed with the analysis of the court below.

E. Petitioners' Interpretation Of The Statute Is Not Required By The Rule Of Lenity Or The Rule Requiring Avoidance Of Serious Constitutional Questions Where Possible

1. Petitioners argue (Br. 47-48) that the rule of lenity compels the acceptance of their reading of the anti-structuring offense. But as this Court recently reaffirmed, "that venerable rule is reserved for cases where, after seizing every thing from which aid can be derived, the Court is left with an ambiguous statute." *Smith v. United States*, 113 S. Ct. 2050, 2057 (1993) (internal quotation marks and brackets omitted). As we have shown, the language of the anti-structuring provision, the structure of the subchapter of Title 31 governing reporting requirements, and

the pertinent legislative history all demonstrate that a defendant must be aware of the reporting requirements and intend to evade them, but that he does not have to know that doing so is unlawful. The rule of lenity therefore does not come into play.

2. Contrary to petitioners' contention (Br. 32-33), it is unnecessary for this Court to embrace their interpretation of the statute to avoid the constitutional question whether Congress may validly omit a scienter requirement from the structuring offense. Compare, e.g., *United States v. Freed*, 401 U.S. 601, 607-610 (1971) (no scienter required for registration of hand grenades), and *United States v. Dotterweich*, 320 U.S. 277, 284 (1943) (shipping misbranded drugs punishable without "consciousness of wrongdoing"), with *Lambert*, 355 U.S. at 229-230 (scienter required where convicted felons must register with the city five days after arrival). Under the interpretation advanced here, a criminal violation of the anti-structuring provision requires knowledge of the bank's reporting requirements and intent to evade them. The elements of the offense therefore include scienter, which satisfies any possible constitutional objection.²⁸

²⁸ Petitioners' vagueness concerns (Br. 33) are also misplaced. Due process requires "that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Because the anti-structuring provision requires a violator to know of the bank's reporting requirements and intend to evade them, the statute here easily satisfies the requirements of due process.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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